

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

MORGAN HILL CONCERNED  
PARENTS ASSOCIATION, et al.,

Plaintiffs,

v.

CALIFORNIA DEPARTMENT OF  
EDUCATION, et al.,

Defendants.

No. 2:11-cv-3471 KJM AC

ORDER

Plaintiffs move to compel defendant California Department of Education (“CDE”) to produce further responses to plaintiffs’ first two sets of document requests. ECF No. 129. The parties filed their Joint Statement on January 6, 2016. ECF No. 144. The matter came on for hearing on January 13, 2016, all parties being represented by counsel. For the reasons set forth below, the court will grant the motion in part and deny it in part.

I. BACKGROUND

A. The Lawsuit

Plaintiffs – associations of parents of children with disabilities – allege that defendant is violating the Individuals with Disabilities Education Improvement Act, 20 U.S.C. §§ 1400, et seq., through its systemic failure to provide a “free appropriate public education” (“FAPE”) to children with disabilities (Claim 1). As pertinent to this motion, the First Amended Complaint

(ECF No. 6) (“Complaint”) basically alleges that:

- Defendant fails to monitor the provision of FAPE at the local level (Claim 2);
- Defendant fails to investigate complaints alleging a lack of compliance with IDEA (Claim 3); and
- Defendant fails to enforce the provision of FAPE even for “known, chronic non-compliance” (Claim 4).

The Complaint alleges that these failures also constitute violations of Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, as well as the California Education Code §§ 56,000, et seq.

Plaintiffs filed the lawsuit on December 29, 2011. ECF No. 1. On March 29, 2013, Judge Mueller denied defendant’s motion to dismiss the amended complaint, or for a more definite statement. ECF No. 25.

B. Discovery History

On May 5, 2014, Judge Mueller signed a Stipulated Protective Order. ECF No. 60. On October 1, 2014, plaintiffs noticed their motion to compel defendant to produce under plaintiffs’ first two sets of document requests. ECF No. 64. The motion was denied without prejudice to its renewal in proper form. ECF No. 85. However, the parties were instructed as follows:

- Defendant will produce redacted student data “in a manner to allow plaintiffs to track students . . . wherever they are identified throughout defendant’s electronic databases.” Defendant will use pseudonyms to achieve this.
- Defendant will produce documents in the format they are originally stored in defendant’s databases.
- Plaintiffs will provide defendant with “sample lists of search terms for use in retrieving information,” and later (after sampling the results), with a “complete list of search terms.”

On January 26, 2015, the parties were ordered to come up with a joint statement regarding discovery, and a stay was imposed on discovery motions. ECF No. 91. The parties filed their (second) Joint Statement re: Discovery on March 12, 2015. ECF No. 93.

On July 2, 2015, Judge Mueller appointed Winston Krone “as a special master in this case with the limited role of assisting the parties in developing an electronic discovery protocol.” ECF

No. 116. On October 15, 2015, the stay on discovery motions was lifted. ECF No. 116. On November 3, 2015, Judge Mueller issued an Order approving the Special Master's Proposed E-Discovery Protocol. ECF No. 127.

## II. THE MOTION TO COMPEL

On November 18, 2015, plaintiffs filed the pending motion to compel. ECF No. 129 (notice), 144 (Joint Statement).

### A. Overview of Documents Requested and Objections

Plaintiffs' first set of discovery requests consists of 48 requests for documents. See ECF No. 144-2 at 21-52 (requests & responses). In response to plaintiffs' first set of discovery requests, defendant objected to each and every one of document Requests 1-39 and 41-47 on various grounds, and stated that "no documents will be produced until such time as the parties can meet and confer to narrow the scope of this request." Defendant objected to Request 48 on various grounds, and stated that "no documents will be produced."<sup>1</sup>

Plaintiffs' second set of discovery requests consists of 15 requests for documents, including electronic databases. See ECF No. 144-3 at 4-17 (requests and responses). The requests ask for the following databases:

- CASEMIS ("California Special Education Management Information System")
- SESR ("Special Education Self Reviews")
- VR ("Verification Reviews")
- COMPLAINTS ("complaints filed with the Special Education Division's Procedural Safeguards Referral Services and/or Due Process Hearings")
- California Administrative Hearings Database
- CALPADS ("California Longitudinal Pupil Achievement Data System")
- STAR ("Standardized Testing and Reporting")
  - CST ("California Standards Tests")
  - CMA ("California Modified Assessment")

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<sup>1</sup> Defendant objected to Request 40, but apparently produced the requested documents anyway.

- CAPA (“California Alternate Performance Assessment”)
- Standards-based Tests in Spanish

- SEEDS (“Supporting Early Education Delivery Systems”)

In response, defendant objected to each and every document request, on various grounds. Defendant asserted that it had already produced documents responsive to most of the requests, and that “[n]o additional documents will be produced until such time as the parties can meet and confer to narrow the scope” of the requests.<sup>2</sup>

#### B. Contentions of the Parties

In response to every one of plaintiffs’ document requests, defendant set forth a slew of objections in boilerplate fashion. In the Joint Statement, however, defendant limited its discussion to arguments that the document request was vague, overbroad, burdensome, and not proportional to the needs of the case. The Joint Statement contained no discussion of any of the privileges or other protections defendant claimed in its objections.

Plaintiffs argue that their Complaint contains “expansive allegations of systemic noncompliance” with the IDEA, and that their discovery therefore includes discovery regarding every schoolchild who is disabled, or whom the state has determined is not disabled. They argue that this is needed so that they can prove their allegations that the state is not properly classifying or educating these children. Since the complaint alleges state-wide non-compliance, they argue, their discovery cannot be limited “as to specific school districts, disabilities or students.”

Plaintiffs argue that their requests are proportional because what is at stake here is the alleged state-wide failure of defendant to educate the state’s children with disabilities.

#### C. Standards

The scope of discovery under Fed. R. Civ. P. 26(b)(1) is broad, although not unlimited. Discovery may be obtained as to “any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at

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<sup>2</sup> However, at oral argument, it emerged that defendants had not produced any documents in response to plaintiffs’ Second Set of requests. The documents that defendant had already produced were part of its initial disclosures.

1 stake in the action . . . and whether the burden or expense of the proposed discovery outweighs its  
2 likely benefit.” Fed. R. Civ. P. (“Rule”) 26(b)(1). “Information within this scope of discovery  
3 need not be admissible in evidence to be discoverable.” Id. “Evidence is relevant if: (a) it has  
4 any tendency to make a fact more or less probable than it would be without the evidence; and (b)  
5 the fact is of consequence in determining the action.” Fed. R. Evid. 401.

6 Federal Rule of Civil Procedure 34(a) permits each party to serve the opposing party with  
7 document requests within the scope of Rule 26(b). In responding to a document request, “the  
8 response must either state that inspection and related activities will be permitted as requested or  
9 state with specificity the grounds for objecting to the request, including the reasons.”  
10 Rule 34(b)(2)(B).

11 If a responding party is withholding responsive documents, its objection to the request for  
12 those documents must state that responsive documents are being withheld. Rule 34(b)(2)(C). If  
13 the responding party withholds otherwise discoverable documents under a claim of privilege, it  
14 must provide the requesting party with a privilege log. Rule 26(b)(5)(A)(ii). If a party objects to  
15 part of a document request, the objection “must specify the part and permit inspection of the rest.”  
16 Id.

17 Under Rule 37(a), a party may move for an order compelling disclosure or discovery if “a  
18 party fails to produce documents . . . as requested under Rule 34 .” Rule 37(a)(3)(B)(iv).

19 “The party seeking to compel discovery has the burden of establishing that its request  
20 satisfies the relevancy requirements of Rule 26(b)(1). The party opposing discovery then has the  
21 burden of showing that the discovery should be prohibited, and the burden of clarifying,  
22 explaining or supporting its objections.” See Bryant v. Ochoa, 2009 WL 1390794 at \* 1, 2009  
23 U.S. Dist. LEXIS 42339 at \*3 (S.D. Cal. 2009). The party opposing discovery is “required to  
24 carry a heavy burden of showing” why discovery should be denied. Blankenship v. Hearst Corp.,  
25 519 F.2d 418, 429 (9th Cir.1975).

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1           D. Resolution

2                   1. General rulings

3                           a. Obligation to produce relevant, non-privileged documents

4           As noted, defendant objected to every single one of plaintiffs' document requests. At the  
5 hearing on this motion, however, it became clear that even when defendant objected only to a  
6 portion of the request, it failed to produce the documents as to which it had no objection. For  
7 example, Second Set, Request 8 asks for the "Critical Elements Analysis Guide (CrEAG)," and  
8 documents describing or related to it. At the hearing, when asked about this request, defendant  
9 offered no objection to the CrEAG itself – which apparently comprises only two documents – but  
10 only to the request for documents "related" to the CrEAG, and to what it (incorrectly) interpreted  
11 to be a request to create a list of persons familiar with the documents.

12           It is improper to withhold production of a document to which a party has no valid  
13 objections, solely on the grounds that the request is too broad, or asks for information the  
14 requester is not entitled to. Instead, the requested party must produce the un-objectionable  
15 documents, even if it asserts objections or privileges to other documents encompassed within the  
16 same request. See Fed. R. Civ. P. 34(b)(2)(C) ("[a]n objection to part of a request must specify  
17 the part and permit inspection of the rest").

18                           b. State-wide discovery

19           Defendant's principal objection, as to both sets of requests for documents, is that  
20 discovery must be proportional to the needs of the case in light of the burden and expense of the  
21 proposed discovery. Defendant points out that plaintiffs are the parents of only 17 children in  
22 only seven school districts. Yet, it argues, plaintiffs will not narrow the "scope" of their requests  
23 to those children and school districts, and instead are improperly insisting on getting documents  
24 "related to 1,022 school districts and over six million children in the State of California over a  
25 period of eight years and continuing until this litigation ends."

26           While defendant cites the proportionality directive of the Federal Rules, it does not  
27 explain why the state-wide discovery it objects to is not proportional to the needs of this case.  
28 Instead, it simply points out that the discovery is state-wide.

1 The district judge presiding over this case has already ruled that this case can proceed on  
2 the grounds of alleged state-wide, systemic violations. ECF No. 25 at 9 (“the court finds  
3 plaintiffs have a private right of action to challenge CDE’s alleged *systemic* noncompliance with  
4 its IDEA obligations”) (emphasis added). Part of the court’s rationale for finding that exhaustion  
5 of administrative remedies was not required is that “plaintiffs are alleging defendant’s systemic  
6 state policies are violating the IDEA by denying California students FAPE, which is a violation  
7 severe enough to threaten the basic purpose of the IDEA.” *Id.* at 14. In addition, in denying  
8 defendant’s motion to dismiss, the court declined even to address defendant’s statute of  
9 limitations argument “because plaintiffs do not seek individual remedies.” *Id.* at 7 n.2. In  
10 discussing standing, the court reiterated that “the suit does not pertain to violations of any  
11 particular children’s rights . . .” *Id.* at 12. Accordingly, this case is not limited to the harm  
12 suffered by the 17 school children, or the 7 school districts that the plaintiffs are directly involved  
13 with.

14 Defendant has made clear that in its view, it has the right to continue to challenge  
15 plaintiffs’ ability to bring a systemic challenge. *See* ECF No. 144 at 13 (“Whether Plaintiffs have  
16 a private right of action or standing can be challenged at any time, including at the motion for  
17 summary judgment and trial stages”). It may well be entitled to do so, but it is inappropriate to do  
18 so by filing motions to limit discovery in a way that contravenes the district judge’s decision.

19 Defendant is therefore advised that, in the absence of contrary instructions from the  
20 district judge, the undersigned will not entertain “discovery” motions that are, in effect,  
21 challenges to the district judge’s determination that this case may proceed as a systemic challenge  
22 to defendant’s state-wide compliance with the IDEA.

23 Defendant’s objections will therefore be overruled, to the degree they are based upon the  
24 state-wide nature of the discovery.

25 c. Limitation to children with disabilities

26 Defendant objects to discovery that is not limited to children with disabilities. The  
27 problem with this proposed limitation, as plaintiffs point out, is that an element of plaintiffs’ case  
28 is defendant’s alleged “failure to locate, identify and refer children with disabilities . . .”

1 Complaint at 2. Allowing plaintiffs access to information only about the subset of children whom  
2 defendant has already identified as living with a disability, would deprive plaintiffs of the ability  
3 to challenge the non-disability determination made about other children.

4 Defendant's objections on these grounds will therefore be overruled.

5 d. Privilege

6 Nearly all of defendant's objections assert that the requested documents "are protected  
7 from disclosure by the attorney-client, official information, and deliberative process privileges,  
8 the right to privacy, and the attorney work-product doctrine."<sup>3</sup> Each of defendant's objections  
9 also claim protection under: "the Family Educational Rights and Privacy Act (FERPA) (20  
10 U.S.C. § 1232g; 34 C.F.R. § 99 et seq.; Cal. Educ. Code § 49076(a)(3)), the Individuals with  
11 Disabilities Education Act (IDEA) (20 U.S.C. § 1417, subdivision (a)(8); 34 C.F.R. § 300.622)),  
12 and the California Information Practices Act (Cal. Civil Code § 1798 et seq.), and to the extent  
13 that it calls for the disclosure of information from the medical records of children in violation of  
14 the Health Insurance Portability and Accountability Act (HIPAA)."

15 In its statement of legal contentions however, defendant does not argue for the  
16 applicability of any of these grounds for non-disclosure. In addition, defendant has not provided  
17 a privilege log of the documents for which it claims privilege or other protection. At the hearing  
18 on this motion, the court specifically mentioned to defendant that it had not supported its  
19 boilerplate assertions of privilege and protections with any authorities. Defendant did not take the  
20 opportunity to provide any authorities, or to try to link specific privileges and protections to any  
21 specific documents or set of documents.

22 Accordingly, defendant's objections, to the degree they are based upon these privileges,  
23 protections and doctrines (other than the FERPA objections), will be overruled without prejudice  
24 to their renewal in proper form, accompanied by a privilege log complying with Fed. R. Civ.  
25 P. 26(b)(5)(A), and with proper legal and factual support.

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27 <sup>3</sup> Defendant's objection to Request 48 of the first set asserts protection based only on the right to  
28 privacy. Defendant objects to Request 14 of the second set on vagueness and other grounds, but  
does not claim these types privacy or privilege protections.



1 The court notes that defendant's objections based upon FERPA are being addressed in a  
2 separate order. In addition, there is already a Protective Order in place (ECF No. 60), as well as  
3 an E-Discovery Protocol (ECF No. 127-1). It is the court's understanding that all document  
4 production will be conducted pursuant to these orders and, as applicable, the E-Discovery  
5 Protocol.

6 e. Documents "relating to" various issues

7 Plaintiffs ask for documents "constituting, describing or relating to" various matters. In  
8 its objections, defendant makes the boilerplate objection that such a request is "vague, overly  
9 broad, unduly burdensome, and encompasses documents not relevant to the present litigation."  
10 At the hearing on this matter, defendant explained that its objection was that the request called for  
11 every document where the requested document is even mentioned, however peripherally.

12 Plaintiffs' request for documents "relating to" the actual documents they seek in discovery  
13 is simply too broad and vague to compel production. Particularly in this case, where a large  
14 number of documents and a large volume of electronically stored information ("ESI") is involved,  
15 it is inappropriate to ask simply for all documents "relating to" those documents. The court notes  
16 that the requests' use of the term "describing" should cover those documents which are not the  
17 principal document sought (a report, for example), but which discusses or describes the document  
18 in some detail. The goal here is to avoid a production of every single document that even  
19 contains a mention of the principal document sought.

20 Once plaintiffs have the actual documents they need in hand, they may be able to  
21 formulate a more specific request for related documents. However, the court will deny the  
22 current request for documents "related to" the principal documents sought.

23 f. Definitions

24 Defendant argues that plaintiffs' definition of electronically stored information  
25 ("documents") as used in the document requests, is overbroad. However, its argument on this  
26 point consists of no more than reprinting the definition of "electronically stored information"  
27 contained in plaintiffs' document requests. See ECF No. 144 at 20. The alleged overbreadth of  
28 this definition is not apparent from the definition itself, and so without any argument to explain

1 why it is overbroad, this objection will be overruled.

2 Defendant argues that it should not be required “to prepare a detailed log” of the  
3 electronically stored information. However, the court reads the instructions in this case only to  
4 require defendant to provide enough information to enable plaintiffs to access the ESI produced.  
5 Thus, the request does not call for a separate log of each byte of data. Rather, if a database is  
6 produced, the request calls for information about the name, format and size of the database, and  
7 what operating system will enable plaintiffs to access it. This will ensure that the ESI that is  
8 produced is reasonably usable by plaintiffs.<sup>4</sup> The objection will be overruled.

## 9 2. Specific rulings

### 10 a. Requests for budget information – First Set, Requests 4, 5, 17, 19(d)

11 Some of plaintiffs’ requests ask for budget and cost information. See First Set,  
12 Requests 4, 5, 17 (in part), 19(d). Defendant objects that plaintiffs “have not articulated a  
13 reasonable basis for this discovery, and the relevancy of this discovery request is not apparent on  
14 its face.” ECF No. 144 at 28.

15 The relevance of the cost and budget information to plaintiff’s lawsuit is not apparent on  
16 the face of the discovery request. Moreover, plaintiff’s legal contentions in support of its motion  
17 are entirely silent on this specific request. Instead, plaintiff’s contentions simply refer to the  
18 reasons given for Request No. 1, none of which address the relevance of a request for budget and  
19 cost information. At the hearing on this motion, plaintiffs were granted an opportunity to submit  
20 a letter citing the portions of the Complaint where this issue of reduction of services as a cost-  
21 cutting measure is raised.

22 Plaintiffs have submitted a letter, citing Complaint ¶¶ 26 and 58 & n.3, among other  
23 allegations, which allege that the costs of educating children diagnosed with autism explains why  
24 school districts resist evaluating children and that even if the child is evaluated, the school

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25 <sup>4</sup> The court notes that the rule governing the production of electronically stored information  
26 assumes that the requesting party may “specify a form for producing” such information. Fed. R.  
27 Civ. P. 26(b)(2)(E)(ii). The Advisory Notes clarify that this provision is to ensure that the  
28 requesting party receives ESI in a form that is “reasonably usable.” It is not clear that this  
provision specifically authorizes the request for a log, but plaintiffs’ request for a log appears to  
be designed to ensure that the ESI plaintiffs receive is reasonably usable.

1 districts resist the autism diagnosis. The request therefore seeks information that is relevant to  
2 plaintiffs' complaint. Namely, the requests seek information about the possible financial motive  
3 for defendant's alleged resistance to enforcing local compliance with the IDEA.

4 Plaintiffs' motion to compel the production of cost or budgeting information, in  
5 Requests 4, 5, 19(b) and the applicable portion of Request 17, will therefore be granted.

6 b. "Activities" and "actions" – First Set, Requests 3, 6, 11, 16(b), 22 & 24

7 Plaintiffs request documents constituting or describing certain "activities" or "actions"  
8 that are "designed to" achieve specific goals, are "focused on" those goals, are "specifically  
9 responding to" a specified LEA, constitute various types of reviews, or "promote" access. See  
10 Requests 3, 6, 11, 16(b), 22 & 24. Defendants object that these requests are "shockingly vast."

11 These requests are so vague, specifically as to what is meant by "activities," that they  
12 could cover every document referring to every single action ever undertaken in relation to the  
13 education of children with disabilities. The requests are therefore overbroad, and the motion to  
14 compel Requests 3, 6, 11, 16(b) & 24, will be denied.

15 c. First Set, Request 42 – data comparisons

16 Plaintiffs seem to be requesting data comparisons carried out by CDE. At the hearing on  
17 this motion, defendant insisted it did not understand what was being sought there. Since the  
18 request is confusingly wordy, and plaintiffs can first clarify what it is they are looking for by the  
19 use of interrogatories, the motion to compel Request 42 will be denied.

20 d. First Set, Request 43 – *Emma C. v. Delaine Eastin*

21 Plaintiffs request "the monitoring plan(s) adopted in *Emma C. v. Delaine Eastin*; N.D.  
22 California Civil Case No. C-96-4179 TEH, and the results of the monitoring plan." The  
23 relevance of this request is not plain from the face of the request, and the referenced case is not  
24 described in the Complaint or the request. At the hearing on this motion, plaintiffs explained that  
25 defendant's monitoring, at least as to one school district, was the result of the *Emma C.* case.  
26 However, they do not provide a meaningful explanation for why plaintiffs are seeking what on its  
27 face appears to be a public document, why it matters that defendant's monitoring is conducted  
28 pursuant to a plan entered in another case, or why the documents sought are not included in all the

1 other document requests relating to the monitoring systems.<sup>5</sup> The motion to compel Request 43  
2 will therefore be denied.

3 e. Second Set, Request 11 – Documents relating to documents

4 Plaintiff requests all documents constituting or describing communications between  
5 various entities relating to any of the other documents sought in discovery. This apparently  
6 requests the production of every database, and every data point in the database, and is overbroad  
7 on its face. The motion will be denied as to this request.

8 f. Second Set, Request 15 – ACSE reports

9 Plaintiff requests all reports from the Advisory Commission on Special Education  
10 (“ACSE”). As discussed during the hearing, this request is overbroad on its face, since there is no  
11 indication that every such report relates to IDEA compliance. Therefore, this request will be  
12 granted, but limited to those reports in defendant’s possession or control that relate to IDEA  
13 compliance.

14 g. Remaining objections

15 Defendant’s objections to the document requests other than those specified above will be  
16 overruled. The relevance of the remaining document requests are apparent from the face of the  
17 requests, and defendant has not met its burden to show that production should not occur.

18 III. CONCLUSION

19 For the reasons set forth above, IT IS HEREBY ORDERED that:

20 1. Plaintiff’s Motion To Compel (ECF No. 129), is GRANTED, except as specified  
21 below. All production will be conducted pursuant to the Protective Order (ECF No. 60), and all  
22 e-discovery will be produced in accordance with the Protective Order and the E-Discovery  
23 Protocol (ECF No. 127-1). All production involving information covered by FERPA will be  
24 conducted in accordance with the order regarding FERPA notice, filed concurrently with this  
25 order.

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28 <sup>5</sup> Moreover, if plaintiffs are trying to enforce the plan entered in *Emma C.*, they have not explained why it is appropriate to seek discovery for that case here.

1           2. Plaintiffs' Motion To Compel is GRANTED as to Second Set, Request 15, but limited  
2 to those ACSE reports in defendant's possession, custody or control that relate to IDEA  
3 compliance.

4           3. Plaintiffs' Motion To Compel is DENIED as to all requests for documents "relating to"  
5 other requested documents, as discussed above.

6           4. Plaintiffs' Motion To Compel is DENIED as to First Set, Requests 3, 6, 11, 16(b), 22,  
7 24, 42 and 43, and as to Second Set, Request 11.

8           5. Defendant's general objection to state-wide discovery is OVERRULED.

9           6. Defendant's general objection to discovery not limited to children it has already  
10 determined are living with disabilities is OVERRULED.

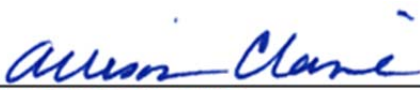
11           7. Defendant's objection to discovery seeking budget and cost information is  
12 OVERRULED.

13           8. Defendant's boilerplate privilege and statutory objections are OVERRULED without  
14 prejudice to their renewal in proper form.

15           9. Defendant's boilerplate objections regarding vagueness and overbreadth are  
16 OVERRULED without prejudice to their renewal in proper form.

17           10. Defendant's objections to the definitions contained in the document requests are  
18 OVERRULED.

19 DATED: January 26, 2016

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21 ALLISON CLAIRE  
22 UNITED STATES MAGISTRATE JUDGE  
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